

NO. 83-807

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In the Supreme Court of the United States

OCTOBER TERM, 1983

CARL MICHAEL SEIBERT,

Petitioner,

v.

D. T. BAPTIST, DISTRICT DIRECTOR
OF INTERNAL REVENUE, ET AL.

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**REPLY BRIEF FOR THE PETITIONER
IN SUPPORT**

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The respondents have misstated and berated the significance of a number of evidentiary and legal issues and their effect on the development of this case. Among their misrepresentations is the burden of proof which was improperly placed on petitioner, (hereinafter referred to as Seibert), to disprove a general claim of qualified immunity and "good faith". Seibert, while burdened with that task, was under the handicap of a *total* bar of discovery subsequent to the production of

Internal Revenue Manuals § 4585.1(2) (App. o-11), 4584.8 and 4585.2(3). (See Exhibit A). During the pendency of the depositions (which were taken and retained by Seibert's counsel), those I.R. Manuals were *not* known to Seibert or his counsel.

The significance of the I.R. Manuals as a device for verifying "good faith" cannot, and should not, be ignored in determining whether the "tax assessment" was intentionally set excessive and notice of deficiency intentionally withheld. Both acts were arranged in tandem to cognitively prevent jurisdiction and review by either Federal District Court (see *Seibert v. D.T. Baptist*, et al., No. 72-936 NE) or Tax Court (see *Seibert v. Commissioner of I.R.S.*, No. 75-1054). This intentional disregard of the Internal Revenue Manual standard was attested to by the Special Agent assigned to Seibert's case, Thomas McWhorter (Exhibit B). As Agent McWhorter explained, the reasonableness standards were ignored in pursuit of the improper program. This was the same program the respondents and their counsel *deny* existed, while at the same time, they are unable to offer "other facts" to justify their prolonged "tax assessment".¹ However, IRS Audit Agent Dudley M. Weathers attested that he reviewed the Internal Revenue Service documents and IR Manuals "which were in effect during the 1972 taxyear" and determined that "the assessment in Mr. Seibert's case was unreasonable" (Exhibit C).

As stated previously in this case, the respondents' interpretation of Seibert's claim of denial of notice of deficiency is erroneously applied to the very case law and confusion they endeavored to advance. There should be little argument that the continual seizure of property and rights thereto, without notice and hearing

¹Affidavit of Steven Beshears, Exhibit D, and letter from ex-prosecutor, Exhibit E.

for over three years, is fundamentally unfair, and in the absence of a "compelling State interest", it violates due process under the Fifth Amendment of the United States' Constitution.

During the decade of litigation in this case, the respondents' counsel have pointed to the conflicting case decisions (as in respondents' footnote 7) as the defense for denying notice of deficiency. As the respondents' counsel understand, they have a superior adversary position and sometimes the courts will rely on the jurisprudence they proffer. Consequently, the information (e.g., I.R. Manual) which revealed the Agency's and Agents' true understanding of issuance *vol non* of a notice of deficiency, was excluded from review of the trusting courts. The respondents' counsel has been so successful at that tactic, they have yet to abandon their pernicious paradigm. They continue by their deleterious misrepresentation of I.R. Manual § 4585.1(2) and § 4584.8. Their contention is that the "review procedure" of § 4584.8, which mandates the issues of 90-day letters, is not applicable to termination-jeopardy assessments under IRC § 6851. Their reasoning is pure demagoguery. The 90-day letter/notice of deficiency, including the computations contained therein, was an intricate part of the review procedure. Moreover, any notice which *was not specifically required* was specifically precluded by the I.R. Manual as is exemplified by Internal Revenue Manual § 4585.3(1) (App. o-14, o-15), which in substance states, no statutory notice of deficiency will be issued for the short period. That reference is specifically to the preemption of the 10-day period statutory notice of I.R.C. § 6331(a). In other words, when a statutory notice was to be withheld, the I.R. Manual would state so. When read *in parte materia*, I.R. Manual § 4585.1(2), 4584.8 and 4585.3(1) give a complete picture - one which required the 90-day letter/notice of deficiency to be

issued "within 60 days from the date of assessment."

In light of the above, the Court may ask what would be gained by excessive assessments and unissued 90-day letters (notice of deficiency). The question was answered, at least in part, by IRS Agent James Pertree's affidavit attesting to the program, which among other things, was intended to "prevent them (accused taxpayers) from making bond ... from hiring expensive attorneys..." (Exhibit F)².

As the previous discussion indicates, there is, and was, substantially more evidence than the mere speculation by Seibert that the actions against him were in bad faith and/or were not legitimate "good faith" revenue efforts. All evidence in this case except the self-serving general denials by the respondents points to the inescapable conclusion that both the "tax assessment" (which was without merit and ultimately withdrawn after four and one-half years) and withholding the 90-day letter (notice of deficiency) were accomplished for the intent of the improper program attested to by Agents Thomas McWhorter and James Pertree. Summary Judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith and other subjective feelings play dominant roles. Nor is it to be used as a substitute for trial. Consequently, the finding that, as a matter of law, pursuant to Federal Rules of Civil Procedure, Rule 56, *et. seq.*, that there exists "no genuine issue as to any material fact" was in error and contrary to the intent and spirit of F.R.C.P., Rule 56.

²Moreover, in the limited trial, without counsel and against two seasoned government trial attorneys, Seibert attempted to proffer evidence of the illegal program. Although the court below cut short Seibert's proffer, it summarized the proffer of the program (TR 182-196, pertinent part, Exhibit G).

STATUTE OF LIMITATIONS

Contrary to what the respondents contend, the district court's ruling on statute of limitations is not an irrelevant issue. The district court's ruling on statute of limitations was not only erroneous, but it prejudiced the development of Seibert's case. In fact, the district court erroneously used the statute of limitations as its ground and reasoning for denying almost all Seibert's motions, granting respondents' Protective Order and for dismissal of defendants (App. d-1-23; App. e-1, App. f-2). The addition of secreted party Larry Hyatt³ was prohibited by the district court's determination that "the complaint against the IRS Agents was not filed within one year of accrual of the claim." The lower court had determined that claim accrued on July 10, 1972 (App. d-18). This reasoning not only distinguished *Kirk v. Cronvich*, 629 F.2d 404 (5th Cir. 1980), but also resulted in the dismissal of Frank McCammon on statute of limitations (App. e-3, see affidavit of Randy Van Nostrand, Exhibit H). Ultimately, the district court, by its order of February 10, 1982, adopted the statute of limitations to all respondents.⁴

³Memorandum sent by Dwight T. Baptist, (Ex. I), in response to memo recommending the secretion of information, (Ex. J), relating to termination by Larry Hyatt, (Ex. I, J, K, L), cf. Privacy Act request by Seibert, (Ex. K), cf. affidavit of Attorney Phil Geddes, (Ex. L).

⁴With the exception of the conversion claim which Seibert, in plaintiff's Motion for Rehearing of those Matters Decided in Order of August 4, 1981, brought to the attention of the district court, the Code of Alabama § 6-2-35 (1975) had a six year Statute of Limitation on conversion. Consequently, the only claim to survive summary judgment [with proof of the program excluded from the jury's consideration (TR 182, 192, 193)] was the conversion claim against Willingham.

The statute of limitations ruling and reasoning in this case is not merely an exercise in academia, but an illogical and unfair reasoning which requires taxpayers (unable to pay assessments) to perpetually file superfluous law suits in the attempt to breach the wall of the Anti-Injunctive Statute (I.R.C. § 7421a). Should they fail, as did petitioner in *Seibert v. D.T. Baptist*, No. 72-936 NE, they are deprived a remedy for tortious conduct simply by virtue of their inability to pay the assessment and file suit earlier. In contrast, the plaintiff in *Rutherford v. Kuntz*, 702 F.2d 580 (5th Cir. 1983), was able to maintain his remedy by paying the \$29,000 assessment. The statute of limitations issue is so interwoven in this case that it cannot merely be ignored and must be addressed.

BURDEN OF PROOF

Contrary to respondents' claim, they never demonstrated any specific evidence of good faith. Their only showing was self-serving statements in conjunction with convenient memories. To date, they have not produced *any* evidence supportive of their excessive and unfounded "tax assessment." Further, they have not offered *any* evidence to minimally demonstrate that they did *any* act which was either intended to investigate and support their alleged assessment or to expedite the resolution of their claimed "deficiency."

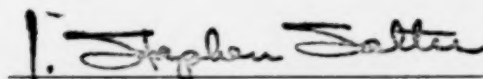
In accordance with *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the burden was improperly placed on Seibert. The two protective orders granted in respondents' favor, coupled with the district court's apparent disregard for the credible evidence offered by Seibert (as hereto exhibited), make it imperative that the Court address the issue of which party bears the burden of proof under the qualified immunity defense. Unlike the respondents

state, burden of proof is not beside the point, especially in light of the *Harlow v. Fitzgerald*⁵ abandonment of the subjective prong and adoption of an objective test. The confusion surrounding the issue of the allocation of burden of proof was astutely noted by Justice Powell in *Harlow*.⁶

CONCLUSION

For the reasons stated above, the evidence in the record, and reasons set forth in the petition for a writ of certiorari, Seibert respectfully submits that a writ of certiorari should be issued to review the lower court's Opinion granting summary judgment in favor of respondents.

March 12, 1984.



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⁵Id., 73 L.Ed. 2d @ 411.

⁶Id. @ 408, n.24.

APPENDIX OF EXHIBITS

EXHIBIT A

Internal Revenue Manual: [Document MT 4500-129 (9-15-71)]: paragraph 4584.8, Immediate Review and Issuance of 90-day Letters, provides in pertinent part, that:

(1) Immediately after assessment, all jeopardy assessment cases will be forwarded to the office of the Assistant Regional Commissioner (Audit) for review. Regional review of these cases will be given highest priority and the cases will be returned promptly to the district offices for further administrative action. It should be borne in mind that in such cases any necessary statutory notices not previously issued must be issued within 60 days from the date of assessment.

Internal Revenue Manual: [Document MT 4500-129 (9-15-71)]: paragraph 4585, Termination of Taxable Period under IRC 6851, provides in pertinent part, that:

¶ 4585.1 Statutory Basis

(2) Assessments under IRC 6851 are not in a technical sense jeopardy assessments. Nevertheless, the review procedures in IRM 4584.8 relating to jeopardy assessments apply also to assessments under IRC 6851, except with respect to departing aliens (see IRM 4299).

¶ 4585.2 Procedures for Terminating Taxable Period

(3) An assessment made as a result of termination of taxable period must be based on a reasonable

computation of tax liability. An assessment equal to the amount of money or other valuable property held by a person at the time of arrest is not considered a reasonable computation unless supported by other facts.

¶ 4585.3 Assessment procedures at Termination of Taxable Period

(1) The determined tax resulting from the IRC 6851 termination is assessed under IRC 6201 and levy action taken under IRC 6331(a) after notice and demand and if appropriate without regard to the *10 day period*. No statutory notice of deficiency will be issued for *the short period*. (emphasis added)

EXHIBIT B

**STATE OF ALABAMA
COUNTY OF JEFFERSON**

AFFIDAVIT

Before me, the undersigned Notary Public, personally appeared Thomas S. McWhorter, who first being by me sworn did depose and state the following:

My name is Thomas S. McWhorter. I am over the age of 21 years and a bona fide resident citizen of Homewood, Alabama. I retired from the Internal Revenue Service in January 1973. I was employed by the Internal Revenue Service in March 1946 and held the following positions for the time periods shown:

Special Agent, Intelligence Division —
(1946-1948) (1953-1973)
Zone Deputy Collector (1949-1950)
Internal Revenue Agent (1950-1952)
Inspector, I.R.S. Inspection Service
(1952-1953)

In 1972, at the direction of Group Supervisor, Intelligence Division, Larry Hyatt, I was assigned the duty of requesting jeopardy (sic) assessments and termination assessments of income tax against persons arrested in drug violation cases. On July 10, 1972 I recommended the termination of a taxable year and assessment of income tax against Carl Michael Seibert of Huntsville, Alabama, in the amount of \$6,458.00. The period covered by the assessment was from January 1, 1972 through July 7, 1972. This action was taken under the authority of Section 6851 of the Internal Revenue

Code...

The program consisting of the termination of taxable years involving persons arrested for alleged drug violations was mainly to cooperate with local law enforcement agencies and to assist in the drug enforcement program by seizing funds and assets belonging to violators. This was done, as I understood it from my supervisors, to dry up the drug traffic.

As I recall, during this period not too much attention was paid to Manual procedures involving drug law violators, but the main thrust was to tie up funds and assets seized.

(s) Thomas S. McWhorter

Sworn to and subscribed before me on this 13th day of July, 1981.

(s) Virginia H. Flowers
Notary Public

EXHIBIT C

STATE OF ALABAMA
COUNTY OF MADISON

AFFIDAVIT

Before the undersigned Notary Public personally appeared Dudley M. Weathers who, first being by me duly sworn, did depose and state as follows:

My name is Dudley M. Weathers. I am of legal age and a bona fide resident citizen of Huntsville, Alabama.

I was employed by the Internal Revenue Service from 1972 to 1980 during which time I held the following positions for the periods shown:

from 10-30-72 Internal Revenue Agent, National
to 7-5-75 Office, Income Tax Division,
Ruling Group

from 7-6-75 Internal Revenue Agent,
to 1-12-80 Birmingham District, Audit Division
Huntsville Audit Group

At the request of Carl Michael Seibert, I have examined a number of documents and Internal Revenue Service Manuals which were in effect during the 1972 tax year. These IR Manuals relate to the termination assessments under IR Code § 6851. I have also reviewed the letter which was apparantly (sic) sent by Larry R. Hyatt, Group Supervisor, Birmingham Group Intelligence Division, on July 10, 1972 and computation attached thereto. The letter contains no information upon which a reasonable or collectible computation could be based. In essence, the letter states that on July 7, 1972 Mr. Seibert was charged with possession of 1090 L.S.D. blotters, that an informer established that the

value of the L.S.D. was \$.30 each and that it sold for \$1.50 each, and that at the time of his arrest for possession of L.S.D., Mr. Seibert had \$2,712.01, a 1969 Oldsmobile 442 and a bank account at Henderson Bank. Mr. Seibert's gross income for the period in question was computed to be \$25,930.00 based on the information supplied by the Huntsville Police Department and an informant. Taxes in the amount of \$6,458.00 were assessed by the IRS. The letter is absent any direct testimony of personal knowledge of drug sales. Absent some basis other than hearsay evidence, there is not a reasonable basis upon which any of this assessment can, or could be justified.

In reviewing the figures attached to the letter, I have determined that they are not supported by the evidence in the letter, nor would I, as a Field Agent, have calculated such an assessment. In this assessment, the Internal Revenue Service could not, by standards I am acquainted with, have prevailed in any forum absent the presence of larger unexplained assets or more evidence. Under the information presented by Mr. Hyatt's letter and values of the property as provided by IRS documents, Mr. Seibert's tax for January 1, 1972 through July 7, 1972 would have been more reasonably calculated based on the increase in net worth as follows:

\$ 2,712.01	(cash)	
327.00	(blotters)	1090 LSD blotters
50.00	(guitar)	x .30 cost
550.00	(car)	\$327.00
97.67	(bank account)	
6.00	(apparently found in auto)	
<hr/>		
\$ 3,742.68	Net Worth Increase (unless otherwise demonstrated that property was acquired prior to January 1, 1972)	
255.00	Tax on the Net Worth Increase	
19.13	Self-employment tax (7.5%)	
<hr/>		
\$ 274.13	Total Tax	

c-3

Based on the information available to me, the assessment should have been computed using the above figures. It appears the assessment in Mr. Seibert's case was unreasonable.

(s) Dudley M. Weathers

Sworn to and subscribed before me this 1st day of February, 1982.

(s) Stephanie W. Tesney
Notary Public

EXHIBIT D

STATE OF ALABAMA
COUNTY OF MADISON

AFFIDAVIT

I, Steven Marlyn Beshears, having been first duly sworn, depose and say:

During the year of 1972 I worked as a paid informer for the Huntsville Police Department. I went to work for them because they were threatening to put me in prison for many years. I was to work with Narcotics Officer Gary Patterson, who was to use the cover name of Sam. Most of the time, he bought drugs from people I would introduce him to as my cousin. Gary figured out that I had been selling some of my own drugs back to the city through some people because of their ages and quantities of buys. I believe he just guessed about it, but instead of making me stop selling, he wanted to know how much money I was making. Gary told me he wanted in on it, and he started demanding some of the money which we made from selling our drugs back to him through third persons. The money we kept would be written off as spent on drugs bought in making cases against people. Some of the drugs I would buy in Atlanta, and some Gary would give me.

To set up cases, I would meet someone who smoked marijuana or did drugs. We would go out riding around and I'd tell them I needed to go make a delivery. Then on the way there I'd tell that person we were going to meet my cousin Sam, and that I owed him some money, and if they handed him some drugs he would just take them for the money I owed him. It was easy because young people wanted to be drug dealers because it made them kind of a hero and their friends thought they were cool. An example of two of those people I can think of offhand are

Ted Easley and Richard Shackelford.

I first met Mike Seibert at an outdoor concert at Monte Sano State Park where he and some other people were playing frisbee. We started talking and playing frisbee together. After that I learned where he lived and came by his house on Westwood Drive a couple of times where we played more frisbee. Mike also visited me at my place a few times.

Gary started pressuring me to come up with someone believably a big drug dealer so we could account for all the money which was being spent on drug buys, saying he would see me back in jail if I didn't. I would report to him on my progress of hunting for someone.

On July 5, 1972, I came by Mike's house to see him. I had arranged with Gary to meet him at the Cotton Club parking lot and I would try to get Mike to come with me. When I got to Mike's house, he had been doing yard work, and I asked him if he wanted to ride over and meet my cousin, Sam. He said he could use a break, so he agreed. On the way over to meet "Sam," I explained that Sam was from Mobile and they were a little dry on drugs, and that I had some drugs I wanted to sell Sam, but I was in debt to him. Although I planned to pay him later, if he knew they were my drugs, he would just take them because I could not afford to pay him back right now. I asked Mike if he would just hand them over to Sam. Mike said he'd think about it, but he did not seem to like the idea. When we got to the parking lot, Sam (Gary) was there waiting for me. On the way to Gary's car, Mike told me he did not want to hand him the drugs. So instead of Mike giving the drugs to Gary, I believe I gave Ted Easley a lesser amount to give Gary. I think this was one of the times Ted handed drugs to Gary, because I had made some cases on Ted this way. Mike did not talk to Gary very much. He just seemed to be thinking about what was going on.

When we left Sam's (Gary's) car, Mike somehow had figured out the whole thing we had going. He told me he believed I was an informer and that my cousin was a narcotics agent. He asked Ted if he had ever handed any drugs over to that guy. Ted said he had, but he had not been arrested for anything. Then Mike said he believed Ted might (be) in trouble. I tried to convince Mike he was wrong, but I did not believe I was successful. After I dropped Ted off, I called Gary and told him Mike thought he was a narc. Gary told me he knew Mike a long time ago, and he really wanted to bust him because he did not like him and we needed to keep quiet by putting him in jail.

Mike had told me earlier he had planned to go out of town that Friday, which was the 7th of July, so I told Gary we needed to get him soon or we might lose our chance. I tried a couple of times to get in touch with Mike on that Friday, but I was having trouble catching him in. Finally about 5:00 P.M., I came by with Tonya Stearns, my girl friend, and he was home. I carried an envelope of L.S.D. in to his house with me. He did not seem very happy to see me. When he answered the door, I asked if I could come in and he said yes. When I came inside he appeared to be getting ready to take a bath. I walked into his room and he left me standing there while he was in the bathroom. I only had a chance to plant one paper strip with the blotches of L.S.D. on it in his room on his dresser before he came back in from the bathroom. When he came back, I asked him if he would go with me to see my cousin and let him convince him that he was not a narc, but Mike refused, saying he was getting ready to leave town. Mike walked me to the edge of his living room where I asked him for an envelope. He gave me a Blue one from a box on top of a bookcase. He did not see me as I left. When I walked out, the passengers window of his 442 was rolled down. I kept 5

strips in the envelope I had, and put 5 strips in the blue one he gave me. I put them both in the front seat of his car under a white bag that was in the front seat with some other papers. Then Tonya and I left. We drove around the block to see if the police were there yet. When we saw them Tonya thought we were going to be busted, but I told her not to worry. I went to the phone and called Gary and told him it had been done.

Gary was pleased with the way things had gone in setting up Mike, so he gave me a larger amount of money than I got for any other case. Then for some reason Gary started telling the people that I busted, and even some people I had not busted, that I was the informer in their case. Apparently he was trying to get me hurt or killed, I believe in order to keep me from telling about what we were doing. After some of what I did came out, the police harassed me, stopping me all the time.

I regret what I have done to some of those people who were my friends, and I am still not sure what made me do it. I guess fear of what would happen to me if I did not work with the narcotics squad, and money, are what made me not stop before I hurt so many people who were just growing up. I wish nothing more than to try to explain what was happening during the time I was an informer, and especially in Mike Seibert's case because he was probably hurt more than most of the others. I had not bought drugs from him, and no one from the I.R.S. ever asked me about buying any from him, nor did I go to them and tell them I bought drugs from Mike Seibert.

(s) Steven Beshears

d-5

Sworn to and subscribed before me this 8th day of July,
1981.

(s) Mary Ellen Kelley
Notary Public

EXHIBIT E

CITY OF HUNTSVILLE
Governed by Mayor and City Council
P.O. Box 308
Huntsville, Alabama 35804
★
Phone: 532-7301

Charles H. Younger
City Attorney
E. Cantey Cooper
Asst. City Attorney
Roy W. Miller
Asst. City Attorney

November 18, 1981

Ms. Norma Jean Robbins
Admissions Secretary
Alabama State Bar
415 Dexter Avenue
P.O. Box 671
Montgomery, Alabama 36101

Dear Ms. Robbins:

During the years of 1972 to 1979 I prosecuted criminal cases for the Madison County District Attorney's Office. Sometime during the scope of my employment there I was assigned a felony case to try against Carl Michael Seibert. After I received the case I interviewed witnesses and worked the case up for possible prosecution. After doing so I made the determination that there was no merit to the prosecution of said case. A request was made by myself to the District Attorney to reassign the

case to someone else for them to make an impartial and separate consideration. Without rechecking with the District Attorney's Office to see the outcome, it is my recall that said case was, in fact, dismissed after review by another member of their staff.

After the dismissal and for some three to five years thereafter, I got to know Carl Michael Seibert on a social basis. He highly impressed me as a very intelligent, industrious, and capable individual. It is my opinion that he would make an excellent attorney and should be given all consideration directed toward that end result. Therefore, I respectfully submit that if possible you certify him as a law student in good standing.

Sincerely yours,
(s) Roy Wesley Miller
Roy Wesley Miller

RWM/bab

EXHIBIT F

STATE OF ALABAMA
COUNTY OF MONTGOMERY

AFFIDAVIT

I, James Pertree, after being first duly sworn, do depose and say the following:

In the early 1970's the Internal Revenue Service came out with a program to get money out of drug seller's hands. The main effect of this program was to stop them from buying more drugs, to prevent them from making bond when arrested and from hiring expensive attorneys. Agents and Special Agents of the Internal Revenue Service were selected in Huntsville, Birmingham, Montgomery and Mobile, Alabama to be on a standby basis night and day for a call from a police department that had made an arrest for the sale of drugs. I was called down to the Montgomery City Police Department about 10 times. On each case, an undercover policeman had bought some type of illegal drugs. When I arrived at the police department, the money would be on a table and the drug seller was in the County Jail. I would talk to the undercover policeman who bought the drugs. From that information received pertaining to the drug seller, I made a computation of income tax plus penalty and self-employment tax that would at least equal the cash on the table. As an audit agent, I wrote a report and then either I or a Special Agent would call a Collection Officer and he and I went and talked to the drug seller while he was still in jail. I would talk to him to get any information pertaining to his drug selling and/or his net worth. I would tell the drug salesman he owed "X" number of dollars of tax and would explain to him what I did and ask him if he

wanted to pay the tax. They always said "No". The Collection Officer would then serve a lien on the taxpayer and city for all the money on the table and his car. I had 24 hours to get my case to Birmingham to the District Director who had been called before each of my assessments.

The policy of this program was set by the District Director, Dwight T. Baptist, and was communicated within the Internal Revenue Service by every way possible — oral and written, from many people. I do not have any of those memos because when an agent retired, as I did in May of 1980 (after 32 years of service), he is supposed to leave that material with the IRS.

I have reviewed the letter of July 10, 1972 by Larry Hyatt which recommends termination of Carl Michael Seibert's 1972 tax year. I have never seen any termination assessment made when there were no sales charges against the taxpayer or a police officer could not personally attest to sales by that person. I would not have made a termination in Mr. Seibert's case unless the police officer could have provided more than what appeared to be hearsay. I would have asked to talk to someone who personally knew of drug sales.

(s) James Pertree

Sworn to and subscribed before me this 27th day of January, 1982.

(s) Margaret G. Moch
Notary Public

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CARL MICHAEL SEIBERT,)

Plaintiff,)

vs.)

LEE WILLINGHAM,)
Internal Revenue Officer,)

Defendant.)

) CIVIL ACTION
) NO. 77-PT-0951 NE

TR 179 Thomas McWhorter called on behalf of plaintiff, having first been duly sworn was examined and testified as follows:

TR 180 Q. During the course of your employment and more specifically in July of - July 10 of 1972 did you have an occasion to be involved in my case?

A. Well, I was involved in a lot of cases. I assume yours was one of them.

Q. I would like to show this to you. Let me go ahead and enter it --

TR 181 Q. Mr. McWhorter, is that your signature down there, sir?

A. Yes.

Q. Do you remember anything -- well, let me ask you this. Are you familiar with six thousand four hundred fifty-eight dollars here?

A. Yes.

Q. Can you tell me if there was a program during this period of time --

MR. KELLAR: Objection, Your Honor.

THE COURT: Sustained.

TR 182 ...

Q. Was the action taken in my case for revenue purposes?

MR. KELLAR: Objection.

THE COURT: Sustained.

MR. SEIBERT: Your Honor, may I proffer Mr. McWhorter's testimony for the record outside the presence of the jury?

THE COURT: All right. Ladies and gentlemen, you will be excused. Remember my previous instructions and don't discuss or comment on the case. If you will remain out in the hall for about five minutes, please.

(In open court, jury not present.)

Q. Mr. McWhorter, you were the agent that was assigned the agent of the originator in this case; is that right?

A. That's right.

TR 183 Q. During this period of time, was there a program for using the Internal Revenue Service for some other reason than revenue?

A. There was a program about this time that the Internal Revenue Service was assisting the local law enforcement authorities, State and City, in attempting to dry up the drug traffic.

Q. Yes, sir.

A. By seizing whatever funds that the drug sellers had or other assets that they had.

Q. Did collection officers as a general rule have knowledge of that program?

MR. KELLAR: Object to that, Your Honor.

THE COURT: Well, this is a proffer.

MR. KELLAR: Well, that's true. I'm sorry.

A. To my knowledge, the collection officers did have a general knowledge of the program, certain of the officers were assigned to this program.

Q. Do you remember at all how the procedure worked or the program worked?

TR 184 A. Well, the collection officers were usually called in on a case where local law - the police would seize funds from drug sellers and they would - the collection officers would go through a termination of a taxable year of the drug seller and try to tie - try to assess all the tax against what they had seized.

...

TR 185 Q. Is that a proper function of the Internal Revenue Service, civil powers of seizure?

MR. KELLAR: Objection.

THE COURT: Sustained - well, go ahead and proffer it.

...

A. Would you ask that again, please?

Q. Yes, sir. The Internal Revenue Service has vested in it incredible seizure powers, more than any other agency in the United States. These powers, would you say, are granted for the sole purpose of revenue?

A. I would say so, yes.

Q. Would a use of that, any improper or any other use of it, other than for revenue purpose be an abuse of that trusted authority?

A. Yes, I think it would be an abuse. My opinion, it would be an abuse.

Q. That's based on being with the Internal Revenue Service from 1946 to 1973?

A. Yes.

...

TR 186 THE COURT: Mr. McWhorter, are you the agent that made the initial recommendation that Mr. Seibert's tax year be terminated?

THE WITNESS: Yes, sir.

THE COURT: Did Mr. Willingham here have anything to do with that determination being made?

TR 187 THE WITNESS: I don't recall, Your Honor, whether Mr. Willingham was the officer on the case or not.

THE COURT: Well, do you recall that he did have any role in making the decision as to whether the termination was to be made?

THE WITNESS: I really don't know.

THE COURT: What was your capacity, were you a Special Agent or Revenue Agent?

THE WITNESS: I was a Special Agent at the time, yes, sir.

THE COURT: As a general rule, did a Revenue Agent have any role in making the decision as to whether or not someone's tax year should be terminated?

THE WITNESS: Yes, sir.

THE COURT: Other than calculating tax?

THE WITNESS: Yes, sir. They computed the tax.

THE COURT: Well, I know it. That's what I say, other than calculating the tax, did they have anything to do with making a decision as to whether or not the tax year should be terminated?

THE WITNESS: They recommended that the tax year be terminated, yes, sir.

TR 188 THE COURT: Is there anything in the file that you are aware of that would indicate that Mr. Willingham had anything to do with the decision as to whether or not the tax year was to be terminated or anything to do with calculating the tax that was said to be due?

THE WITNESS: Not to my knowledge. I don't know who - the figures and recommendations came to me in this case through Group Supervisor Larry Hyatt, who was Group Supervisor in the Intelligence Division.

THE COURT: Didn't you make the initial recommendation to Mr. Hyatt?

THE WITNESS: No, Mr. Hyatt made it to me and I did the paperwork on it.

THE COURT: I recall seeing a form on which it indicated that you made the recommendation and that Mr. Hyatt then approved it; is that not correct?

MR. SEIBERT: That's the way it looks.

THE WITNESS: Yes, that's the -- on this form here -- I had -- I made the original recommendation as the originator.

THE COURT: Yes, sir.

TR 189 ...

BY MR. SEIBERT:

Q. Would you say, Mr. McWhorter, that based on the computation, the letter from Larry Hyatt, that this was a -- and based on the information contained in there, that this was a reasonable or good faith assessment?

TR 190 A. Well, I don't know whether it was a good faith assessment, but it was probably all he had to go on.

Q. Was it enough to go on?

A. Well, I couldn't swear to that, whether it was enough. As I said before, they usually made these assessments to cover the value of the assets seized.

Q. If the value -- well, let me get the manual on that period, if you don't mind. Do you remember any time reviewing the manual procedure at some points -- subsequent to our conversation the first time I came to see you -- specifically under I.R. Manual Procedure 4585.2, that a termination of taxable year and assessment must be used sparingly and care taken to avoid assessing an unreasonable assessment. They should be limited to the amount which reasonably can be expected to equal the ultimate tax liability for terminated period. Therefore, termination of taxable year and assessment must be personally approved by the District Director.

Now, by that, was the District Director obligated to make sure the assessment was reasonable?

A. Well, he was responsible for seeing it was reasonable, yes.

...

TR 191 THE COURT: Well, let me ask Mr. McWhorter this. Mr. McWhorter, do you recognize the distinction between a Revenue Agent and Revenue Officer?

THE WITNESS: Yes, sir.

THE COURT: Or is there one?

THE WITNESS: Yes, sir.

THE COURT: What is the distinction?

THE WITNESS: A Revenue Officer is responsible for collecting funds, collecting back taxes and also any funds that are due on an assessment.

TR 192

THE COURT: Does a Revenue Officer play any role in determining initially whether or not an assessment is to be made?

THE WITNESS: Generally not. They may have been in this case, in this program. Generally he is given what they call a warrant for restraint of taxes and he goes out and makes his collection based on -

TR 193 ...

THE COURT (Addressing Mr. Seibert): Well, I'm not going to allow you just - you know, I don't see that there is any relevance and if I am in error in shortcutting your proffer, I'm in error of that. In absence of some sort of an indication that this Defendant Willingham was doing something other than just making a collection, I don't see that it's appropriate to take any further time in establishing that somewhere down at the end of the trail of some sort of abusive program that the IRS may or may not have adopted, that a Revenue Officer

TR 194

who was out in the process of collecting accounts is chargeable with the responsibility growing out of any such program, if any. I think that it perhaps is just going to take time with the jury being out and waste time in going into that any further. In the absence of some indication that you can show me that he was involved in making that decision initially.

Now, the question of the disposition of the property after he obtained it is a matter that is still before the Court, of course. But I don't want to take any more time with this part of it.

MR. SEIBERT: Yes, sir, I appreciate the Court's patience. I understand that. The only thing that I could even offer is the fact that the assessment was so unreasonable and that he knew or should have known and probably did know of the program.

THE COURT: Well, I don't know that he had any discretion with regard to it. But at any rate, let me say this. The Court understands that you are proffering, or would proffer, if given the opportunity, evidence that there was some sort of program whereby the Internal Revenue Service had undertaken either for a purpose not related to the collection of revenues, attempt to financially embarrass in some way, people who were allegedly involved in drug trafficking. (sic)

MR. SEIBERT: Yes, sir.

THE COURT: Or that concomitant with the

TR 195 possibility of collecting revenues that they were so involved. To the extent that you are making such a proffer, you have that proffer as far as the Court is concerned. But in the absence of some sort of indication that this Defendant Willingham was anything other than someone who ultimately was charged with basically what is an administerial act of collecting it itself, I don't see any need in taking any more time.

MR. SEIBERT: Yes, I understand. The only thing I was going to say is that the other defendants that have been have been dismissed, that those people that -- and the party that was not allowed to be added, did have knowledge of this. In fact, Larry Hyatt is the one that relayed to Mr. McWhorter this information.

THE COURT: All right. Okay. Of course, if there is error in whatever the Court's ruling in that regard is concerned, that error is already there and I doubt that it would either be resurrected or changed by virtue of what takes place here. That area is fixed, if there is any -- all right. Do you need to ask him any questions?

MR. KELLAR: No, Your Honor, not in light of -- is Mr. Seibert going to offer any more in evidence to the jury with this witness?

TR 196 THE COURT: anything else to the jury other than what you have proffered now?

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MR. SEIBERT: No, sir.

THE COURT: Do you have any questions of this witness for the jury?

MR. KELLAR: No, sir.

THE COURT: All right. You can step down and you are excused.

(Witness excused).

EXHIBIT H

STATE OF ALABAMA
COUNTY OF MADISON

AFFIDAVIT

I, Randy Lewis Van Nostrand, after being first duly sworn, depose and say:

I came to know Mike Seibert in the early 1970's because his case was similar to that of other people I knew who had been set-up or entrapped by police informants using illegal means. Mike came to me with some evidence that he had which supported his claim that he had been set-up by Steve Beshears, a person of questionable character. Mike explained to me that Beshears was the only source of information the Internal Revenue Service had for their tax case against him and that if he could get the IRS to examine their own case, they would have to stop hounding and worrying him. He further stated that he had tried to get the courts to review the tax case, but they would not allow him to find out any information about the IRS claim or give them any of his evidence. He said he had tried to get Internal Revenue Service agents in the Collections and Audit Divisions to take his evidence, but they refused, referring him to the Criminal Intelligence Division. Mike further explained to me that some IRS agents told him about a program to use the IRS to assist local police in getting convictions and harassing those arrested by forcing them into paying for tax litigation. He claimed they lacked proper motive for their acts and there was a conspiracy between those making the claim of tax and the local police.

The things Mike showed me convinced me that he was right, that the Internal Revenue Service had abused him

and taken his property without cause. I was motivated to accompany him with his allegations to the Internal Revenue Service where we tried to speak to an agent. The purpose of the trip there, as he explained it to me, was to explain to the IRS about the set-up and Steve Beshears' importance in the IRS claim against him, and Mike hoped that this would force them to examine their case against him, and end what he claimed was a conspiracy. He thought that if they would not end it, they could not later claim they did not know about his claim of a conspiracy. Mike asked me to accompany him so as to verify at a later date that he had gone to see the IRS and why he went.

When we arrived at the Internal Revenue Service office, I met the IRS Agent, Frank McCammon, but was not permitted to accompany the two of them into an adjoining room where Mike was supposed to go with his briefcase and show him the substantiating evidence which he had previously shown me, and which as stated above, he felt would prove to them that he had been wronged. I remember Mike leaving that day angry because the agent refused to take any of the evidence.

(s) Randy Lewis Van Nostrand

Sworn to and subscribed before me, this 29th day of January, 1982.

(s) Beth Abrams
Notary Public

EXHIBIT I

October 21, 1975

Chief, Disclosure Staff
National Office CP:D

District Director
Birmingham District

Freedom of Information Request -
Re: Carl Michael Seibert (75-1054)

This acknowledges your memorandum of October 14, 1975.

The administrative file including the documents requested by Mr. Geddes is located in the Office of Regional Counsel, Room 1624, 2121 Building, 8th Avenue North, Birmingham, Alabama 35203.

On October 20, 1975, Mr. Seibert requested the Tax Court to furnish affidavits from Huntsville police officers and a bill of sale for a Martin D-35 Guitar. A copy of this request is enclosed. The request was received by Mr. Robert W. West, attorney in the Office of Regional. The documents furnished to Mr. Seibert are included in the enclosures to this memorandum.

Also enclosed are copies of Form 2644, Recommendation of a Termination Assessment, for Mr. Seibert for the period January 1, 1972 through July 7, 1972. This is one of the reports prepared in connection with the examination. We do not recommend that this document and the attachments to this document be furnished to the requester.

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We will await your response before contacting Mr. Geddes regarding his request for inspection of the records.

Dwight T. Baptist

Enclosures

cc: Public Affairs Officer
Southeast Region

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EXHIBIT J

date: Oct. 14, 1975

**to: District Director, Birmingham
Attention: Ed Bryla**

**from: Chief, Disclosure Staff CP:D
National Office**

subject: FOIA request re Carl Michael Seibert (75-1054)

Attached is a copy of an FOIA request submitted by Mr. Philip A. Geddes for documents pertaining to his client's 1972 tax return.

Please conduct a search for the requested documents and forward to us two copies of those documents on which you have disclosure questions. Also include your disclosure recommendations for each.

Contrary to what you were previously informed about inspection procedures, please await our response before contacting Mr. Geddes to arrange a mutually convenient time for inspection.

If you have any questions, please contact Mr. Halbach at (202) 964-4912.

(s) Charles A. Gibb

Attachment

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EXHIBIT K

TAXPAYER ASSURANCE TELEPHONE "CALL BACK" MESSAGE		NOTE: Use this form only when inquiry cannot be answered with reasonable promptness.	
1. Disposition <input type="checkbox"/> (Retain) Research and Call Back <input type="checkbox"/> To Supervisor <input checked="" type="checkbox"/> To: Mr. Bryla		2. Call received by: T. James	
		3. Date 10-15-75	4. Time 10:40 P.M.
Please return taxpayer's call direct. Destroy this form immediately after satisfying inquiry.			
5. Name of caller Carl M. Seibert — Huntsville		6. Phone number to call 852-3592	
7. Unanswered question			

**Re: Delay in his request for information under Privacy
Act. Requested info some 4 mos. ago. Needs info to go
to Court.**

EXHIBIT L

STATE OF ALABAMA
COURT OF MADISON

AFFIDAVIT

Before me, Philip A. Geddes did personally appear and after being duly sworn by me, did depose and say as follows:

1. My name is Philip A. Geddes and I am an attorney in Huntsville, Alabama.

2. On June 19, 1975, I submitted a Freedom of Information Act request for Mike Seibert. As best I can recall, I received a request from the IRS Disclosure Office for a power of attorney form which I returned to them. I then received a form letter requesting additional time to comply with my request. The final letter which I received in November, 1975, stated, in substance, that they were unable to locate the file requested.

3. To my knowledge, no part of Mike Siebert's (sic) file was made available for his or my inspection under my request.

(s) Philip A. Geddes

Sworn to and subscribed before me this the 30th day of June, 1981.

(s) Elizabeth Price Moore
Notary Public